83-303

Office-Supreme Court, U.S.
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AUG 12 1983
ALEXANDER L. STEVAS,
CLERK

IN THE

UNITED STATES SUPREME COURT

CASE NO._____

ROBERT R. MANIATES

Appellant,

v.

CITY OF LYNCHBURG

and

THOMAS S. MARSHALL

Appellees.

APPEAL FROM THE SUPREME COURT OF VIRGINIA

STATEMENT OF JURISDICTION

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IN THE

UNITED STATES SUPREME COURT

ROBERT R. MANIATES,)

Appellant,)

v.) CASE NO. _____

CITY OF LYNCHBURG)

and)

THOMAS S. MARSHALL,)

Appellees.)

JURISDICTIONAL STATEMENT

Pursuant to Rule 15 of the Rules of the Supreme Court of the United States and in support of his appeal to this honorable Court, the Appellant, Robert R. Maniates, submits the following:

A. QUESTIONS PRESENTED BY THE APPEAL.

Whether Virginia Code Section 58-1010 is unconstitutional whereby it allows the

tax collector to seize one's property in an ex parte proceeding upon the mere belief that taxes are owed without affording the taxpayer any type notice or hearing whatsoever, either prior or subsequent to placement of the tax lien and seizure of his property, at which time the taxpayer could contest the accuracy or validity of the lien?

B. A COMPLETE LIST OF ALL PARTIES TO THE PROCEEDING IN THE COURT WHOSE JUDGMENT IS SOUGHT TO BE REVIEWED MAY BE FOUND IN THE CAPTION CAPTION OF THIS CASE.

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D. THE OFFICIAL OPINIONS RENDERED BELOW.

The official opinions rendered below consist of the Lynchburg Circuit Court's Order dated August 2, 1982 and the Order of the Virginia Supreme Court dated June 7, 1983.

E. GROUNDS OF JURISDICTION.

This case arises from a final order of the Virginia Supreme Court entered June 7, 1983 refusing a petition for appeal from the August 2, 1982 Order of the Lynchburg Circuit Court upholding the constitutionality of Virginia Code Section 58-1010. A notice of appeal was filed with the Virginia Supreme Court on August 3, 1983. Jurisdiction for this appeal arises out of 28 U.S.C. Section 1257(2).

F. CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED.

The Fifth Amendment to the United States Constitution provides, in part, that "no person shall be . . . deprived of . . . property, without due process of law."

Virginia Code Section 58-1010 provides that:

> Any person indebted to or having in his hands estate of a person assessed with taxes or levies may be applied to in writing by the officer for payment thereof out of such debt or estate and a payment by such person of such taxes or levies, either in whole or in part, shall entitle him to a charge or credit for so much on account of such debt or estate against the party so assessed. From the time of the service by such officer of any such application, the taxes and levies shall constitute a lien on the debt so due from such person or on the estate in his hands. If the person applied to does not pay so much as may seem to the officer ought to be recovered on account of the debt or estate in his hands, the officer shall, if the for such taxes or levies does not exceed two thousand dollars, exclusive of penalties and interest, procure from a justice of the

peace or judge or clerk of a court not of record a summons directing such person to appear before the appropriate county court or municipal court, at such tme and place as may seem reasonable; and if the sum due exceeds two thousand dollars, shall procure from the clerk of the circuit court of the county or corporation court of the city a summons directing such person to appear before such court on the first day of the next term thereof; provided that in all cases returnable before a county court or municipal court, any person so summoned shall have a right, if the sum due for such taxes or levies exceeds the sum of three hundred dollars, exclusive of penalties and interest, to remove the case to a court having jurisdiciton of appeals from such county court of municipal court wherein the case was brought, and the procedure for and upon such removal shall be the same, mutatis mutandis, as is provided by Section 16.1-92. (Code 1919, Section 2444; 1928, p. 213; 1944, p.333; Tax Code, Section 382; 1960, c. 573.)

G. STATEMENT OF THE CASE.

The Appellant, Robert R. Maniates, (hereinafter referred to as "Maniates") was assessed for real estate taxes by the City

of Lynchburg (hereinafter referred to as the "City") for the year 1978. Maniates refused to pay these taxes as a matter of principle over a dispute with certain City policies. When these taxes were not paid, the City gratuitously sent via the mail a "Final Notice" to Maniates on or about July 30, 1979. This mailing was not required by statute and was not sent via registered or certified mail.

Approximately eight (8) months later on or about March 14, 1980, the City hand-delivered a Notice of Tax Lien to a local bank where Maniates maintained an account. The Notice stated that it placed a lien on "such estate of taxpayer . . . from the time of service of this notice." The tax lien was initiated pursuant to Virginia Code Section 58-1010. This collection statute applies to the collection of all

taxes. See copy of statute reprinted hereinabove. The City gratuitiously mailed Maniates a copy of the tax lien after placement of their lien. The mailing was not required by the Virginia statute. Receipt of the tax lien "froze" Maniates' funds. The bank paid his funds to the City. Both parties agreed in a Stipulated Statement of Facts that "Section 58-1010 does not require a hearing prior to the issuance of a lien under Section 58-1010 and payment of the levied funds owed to the City."

As a result of the ex parte seizure of his property, Maniates filed a Bill of Complaint in the Lynchburg Circuit Court asking for declaratory relief pursuant to 42 U.S.C. Section 1983 that Virginia Code Section 58-1010 be declared violative of Maniates due process rights by failing to

provide Maniates "some type of pre-lien or post-lien notice and hearing to contest the accuracy and/or validity of any lien placed upon the plaintiff's, or anyone else's property."

All evidence was stipulated by the parties. The trial Court entered an Order dated August 2, 1982 holding, in part, that "the collection procedures initiated by the Defendants pursuant to Section 58-1010 of the Code of Virginia, 1950, as amended, did not deprive the Plaintiff of due process of law . . ." See copy of Order attached hereto. The decision was appealed to the Virginia Supreme Court. By an Order dated June 7, 1983, the Virginia Supreme Court refused to review the appeal. A copy of that order is attached hereto.

H. STATEMENT OF SUBSTANTIALITY OF ISSUE PRESENTED.

In the Case at bar, Maniates' property was seized by a local tax collector for the payment of taxes alleged to be due. The collection statute in question did not require the tax collector to have personal knowledge of the taxes due, to verify these matters before a neutral official or to afford Maniates any type hearing either before or after seizure to give Maniates an opportunity to contest the accuracy of amount seized. The United States Supreme Court has repeatedly held that minimum standards of due process require some type hearing at a meaningful time before a nuetral officer before anyone is finally deprived of his property. A recent case in point is Mathews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893 (1976). Mathews involved a procedural due process challenge to the federal government's method of

terminating social security disability payments. In reflecting upon the concept of procedural due process, the Court stressed:

> This Court consistently has held that some form of hearing is required before an individual is finally deprived of a property interest. Wolf v. McDonnell, 418 U.S. 539, 557-558, 92 S.Ct. 2963, 2975-2976, 41 L.Ed. 2d 935 (1974). See e.g. Phillips v. Commissioner of Internal Revenue, 283 U.S. 589, 596-597, 51 S.Ct. 608, 611-612, 75 L.Ed. 1289 (1931). See also Dent v. West Virginia, 129 U.S. 114-, 123-125, 9 S.Ct. 231, 234, 32 L.Ed. 623 (1889). The 'right to be heard before being condemned to sufer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society.' Joint Anti-Fascist Comm. v. McGrath, 341 U.S. 123, 168, 71 S.Ct. 624, 646, 96 L.Ed. 817 (1951) (Frankfurter, J., concurring). The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' Armstrong v. Manzo, 380 U.S. 545, 85 S.Ct. 1187, 1191, 14 L.Ed. 2d 62

(1965). See Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914). 96 S.Ct. at 902. (emphasis added)

The Court in Mathews, supra, also went on to articulate three factors applicable in measuring a statute's compliance with due process.

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burden that the additional or substitute procedural requirement would entail. Mathews v. Elridge, supra, 424 U.S. at 335, 96 S.Ct. at 903.

The requirement of some type hearing before a neutal official before one is finally deprived of his property likewise received considerable attention from this

Court in North Georgia Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601, 95 S.Ct. 719 (1975). There, the Court struck down a Georgia statute that allowed prejudgment garnishment conditioned upon the filing of an affidavit stating that the affiant feared a loss of monies in the main suit unless garnishment was issued and upon the posting of a double surety bond. Holding that this procedure did not meet minimum requirements of due process, the Court held:

> The Georgia garnishment statute has none of the saving characteristics of the Louisiana statute. The writ of garnishment is issuable on the affidavit of the creditor or his attorney, and the latter need not have personal knowledge of the facts. Section 46-103. The affidavit, like the one filed in this case, need contain only conclusory allegations. The writ is issuable, as this one was, by the court clerk, without participation by a judge. Upon service of the writ, the debtor is deprived of the use of

> the property in the hands of the garnishee. Here a sizeable bank account was frozen, and the only method discernible on the face of the statute to dissolve the garnishment was to file a bond to protect the plaintiff creditor. There is no provision for an early hearing at which the creditor would be required to demonstrate at least probable cause for the garnishment. Indeed, it would appear that without the filing of a bond the defendant debtor's challenge to the garnishment will not be entertained, whatever the grounds may be. 95 S.Ct. 15 722-723.

In elaborating on his view of minimum due process requirements, Justice Powell's concurring opinion stated:

> In my view, procedural due process would be satisfied where state law requires that the garnishment be preceded by the garnishor's provision of adequate security and by his establishment before a neutral officer of a factual basis of the need to resort to the remedy as a means of preventing removal or dissipation of assets required to satisfy the claim. Due process further requires that the State afford an opportunity for a prompt postgarnishment judicial

> hearing in which the garnishor has the burden of showing probable cause to believe there is a need to continue the garnishment for a sufficient period of time to allow proof and satisfaction of the alleged debt.
>
> * * *
>
> [Justice Powell concluded that the] most compelling deficiency in the Georgia procedure is its failure to provide a prompt and adequate postgarnishment hearing. Under Georgia law, garnishment is a separate proceeding between the garnishor and the garnishee. The debtor is not a party and can intervene only by filing a dissolution bond and substituting himself for the garnishee. 95 S.Ct. at 725. (emphasis added)

Even in the context of tax collections, this Court has recognized that these general principles of due process apply abd that some form notice and/or hearing are mandated by due process prior to final deprivation of one's property. A case in point is Commissioner of the Internal Revenue Service v. Shapiro, 424 U.S. 575,

96 S.Ct. 1062 (1976). Shapiro was a jeopardy assessment case wherein the tax collector argued that the taxpayer was seeking to evade payment of taxes by leaving the Country and therefore was entitled to no type post-seizure hearing. This Court vigorously disagreed and stressed that it:

> * * * has recently and repeatedly held that, at least where irreparable injury may result from a deprivation of property pending final adjudication of the rights of the parties, the Due Process Clause requires that the party whose property is taken be given an opportunity for some kind of predeprivation or prompt post-deprivation hearing at which some showing of the probable validity of the deprivation must be made. Here, the Government seized respondent's property and contends that it has absolutely no obligation to prove that the seizure has any basis in fact no matter how severe or irreparable the injury to the taxpayer and no matter how inadequte his eventual remedy in the Tax Court. 96 S.Ct. at 1072. (emphasis added)

In a footnote, the Supreme Court went on to state that:

> We have often noted that, in resolving a claimed violation of procedural due process a careful weighing of the respective interests is required, Goss v. Lopez, 419 U.S. 565, 579, 95 S.Ct. 729, 738, 42 L.Ed. 2d 725, 737 (1975); and we have noted that the Government's interest in collecting the revenues is an important one. Fuentes v. Shevin, 407 U.S. 67, 92, 92 S.Ct. 1983, 2000, 32 L.Ed. 2d 556, 557, (1972). This interest is clearly sufficient to justify seizure of a taxpayer's assets without a pre-seizure hearing. Fuentes v. Shevin, supra, and to remove any need to subject the Commissioner to the burden of an inquiry into the basis for his assessment absent factual allegations of irreparable injury by the taxpayer. Phillips v. Commissioner, 283 U.S. 589, 595, 597, 51 S.Ct. 608, 611, 75 L.Ed. 1289, 1296-1297 (1931). However, it is very doubtful that the need to collect the revenues is a sufficient reason to justify seizure causing irreparable injury without a prompt post-seizure inquiry of any kind into the Commissioner's basis for his claim. 96 S.Ct. at 1072, f.n. 12. (emphasis added).

Surely if a prompt post-seizure hearing is required for jeopardy collections when the tax collector believes the taxpayer is being dishonest and attempting to avoid payment of his taxes, due process requires at least as much protection for the honest taxpayer. A prompt post-seizure hearing is certainly compatible with the flexible standards required by due process. A prompt post-seizure hearing provides for a hearing at a "meaningful time and in a meaningful manner." Mathews, supra.

Returning to the three factors articulated in Mathews, supra, the private interest to be affected is great. No one should be deprived of his property mistakenly. Secondly, the risk of error is great. Murphey's law dictates that errors are a part of everyone's day-to-day activities - - a condition which the tax

collector is not immune. Finally, the administrative burden to afford the taxpayer a brief hearing after levy but before seizure is miniscule. The commonly stated rationale that collection of the taxes justifies summary procedures has no force once the tax collector has control of the assets. To afford the taxpayer a brief opportunity to set aside the seizure by demonstrating a mistake or inaccuracy is the minimum right to which all taxpayers are entitled. Weighing all these factors, it cannot be said that Virginia Code Section 58-1010 comports with due process.

In conclusion, it is respectfully submitted that the honest taxpayer is entitled to some type prompt, post-seizure hearing to demonstrate that a mistake, either as to the identity of the taxpayer or amount believed to be owed, has occurred. To be meaningful, such a hearing

must obviously occur before the taxpayer is finally deprived of his property. Since Virginia Code Section 58-1010 does not afford any right to a pre-seizure hearing or immediate post-seizure hearing, it clearly violates these well recognized principles of due process. That other judicial avenues may or may not exist to remedy the mistake at a later time is no answer to the mandates of due process. Without a right to at least a prompt post-seizure hearing, no subsequent right to seek a judicial determination is "meaningful", for it comes too late - - after the taxpayer has been finally deprived of his property. It is this type mistaken deprivation that due process seeks to minimize. The Virginia statute totally fails to accord the citizens of the State of Virginia their rights to procedural due process and it should be stricken on this basis.

For these reasons and others deemed appropriate by the Court, Maniates hereby moves the Court to grant his appeal and set this case down for oral argument.

I. NOT APPLICABLE

J. APPENDIX IS ATTACHED

The Appendix consists of:

1) The June 7, 1983 Order of the Virginia Supreme Court;

2) The August 2, 1982 order of the Lynchburg Circuit Court; and

3) Notice of Appeal filed by Appellant on August 3, 1983 with the Virginia Supreme Court.

ROBERT R. MANIATES

By Sidney H. Kirstein
Of Counsel

Sidney H. Kirstein
McRorie, Kirstein & McMahon
P. O. Box 8
Lynchburg, VA 24505
Counsel for Appellant

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he mailed a true copy of the foregoing Appeal from the Supreme Court of Virginia, Statement of Jurisdiction, to Walter C. Erwin, III, Assistant City Attorney, at his last known address, P. O. Box 60, Lynchburg, VA 24505, by depositing the same in the regular manner in the United States mail, postage prepaid, at Lynchburg, Virginia on the 22nd day of August, 1983.

Sidney H. Kirstein

Sidney H. Kirstein

APPENDIX

VIRGINIA :

IN THE SUPREME COURT OF VIRGINIA
HELD AT THE SUPREME COURT BUILDING
IN THE CITY OF RICHMOND ON
Tuesday the 7th day of June, 1983

Robert R. Maniates, Appellant,

against Record No. 821934

City of Lynchburg, Appellee.

From the Circuit Court
of the City of Lynchburg

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the court is of opinion there is no reversible error in the judgment complained of. Accordingly, the court refuses the petition for appeal. Code Section 8.01-675.

A Copy,

Teste:

Allen L. Lucy, Clerk

By:

Deputy Clerk

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

ROBERT R. MANIATES,	)	
Appellant,	)	
v.	)	ORDER
CITY OF LYNCHBURG and THOMAS S. MARSHALL	)	
Appellees.	)	

This cause came on the 30th day of June, 1982 to be heard upon the Plaintiff's Bill of Complaint; the Defendants' Answer thereto; the briefs submitted by the parties; the parties' written Stipulation of Facts; upon depositions submitted to the Court by the parties; and upon the Motion by the Defendants to dismiss the Plaintiff's Bill of Complaint, and was argued by counsel.

UPON CONSIDERATION WHEREOF, the Court being of the opinion that for the reasons and authorities cited in the Defendants'

brief and for the arguments and authorities submitted to the Court at the hearing of this case, the collection procedures initiated by the Defendants pursuant to Section 58-1010 of the Code of Virginia, 1950, as amended did not deprive the Plaintiff of due process of law; that the provisions of the Code of Virginia and common law afford taxpayers an opportunity for a judicial hearing concerning the assessment and collection of delinquent taxes and levies and affords such taxpayers substantial due process of law; that the Plaintiff did not avail himself of his opportunities for a judicial hearing or any other hearing; and being of the opinion that the Plaintiff is not entitled to any of the relief prayed for in his Bill of Complaint and doth sustain the Defendants' Motion, and doth

ADJUDGE, ORDER and DECREE that the Plaintiff's Bill of Complaint be and the same is hereby dismissed with prejudice and each aprty to this action shall bear their own costs in their behalf expended, to which ruling of the Court, the Plaintiff, by counsel, excepted.

And there being nothing further remaining to be done in this cause, it is ORDERED stricken from the docket.

ENTER: 8/2/83

/s/ Norman K. Moon
Judge

I ask for this:

Walter C. Erwin, III
William M. Phillips
City Attorney
Walter C. Erwin, III
Assistant City attorney
Counsel for Defendants,
City of Lynchburg and
Thomas S. Marshall

Seen and objected to:

Sidney H. Kirstein
Coumsel for Plaintiff

A Copy, Teste:
Juanita E. Shields,
Clerk
By:

Deputy Clerk

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

ROBERT R. MANIATES,	)	
Appellant,	)	
v.	)	Record No. 821934
CITY OF LYNCHBURG	)	
and	)	
THOMAS S. MARSHALL	)	
Appellees.	)	

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Robert R. Maniates, the appellant named above, hereby appeals to the Supreme Court of the United States from the final judgment of the Virginia Supreme Court denying a petition for appeal by order entered on June 7, 1983.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

II. The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

i) Bill of Complaint filed in Lynchburg Circuit Court;

ii) Responses and Grounds of Defense of the Defendants, the City of Lynchburg, and Thomas S. Marshall;

iii) Stipulated Statement of Facts entered into between the parties before the Lynchburg Circuit Court on June 30, 1982;

iv) Final Order entered by Lynchburg Circuit Court on August 2, 1982;

v) Notice of Appeal from final order of Lynchburg Circuit Court served August 11, 1982;

vi) Brief in Opposition to Petition for Appeal filed on or about October 26, 1982;

vii) Brief in Opposition to Petition for Appeal filed on or about November 9, 1982; and

viii) Final Order of Virginia Supreme Court denying Petition on Appeal dated June 7, 1983.

The following question is presented by this appeal:

1. Whether Virginia Code Section 58-1010 is unconstitutional whereby it allows the local tax collector to seize property for payment of taxes believed to be due via an ex parte proceeding without affording the honest taxpayer any type pre-seizure or immediate, post-seizure notice or hearing so as to minimize the risk of substantively unfair or mistaken deprivations of one's property?

Sidney H. Kirstein
McRorie, Kirstein & McMahon
P. O. Box 8
Lynchburg, VA 24505

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he mailed a true copy of the foregoing Notice of Appeal to Walter C. Erwin, III, Assistant City Attorney, at his last known address, P. O. Box 60, Lynchburg, VA 24505, by depositing the same in the regular manner in the United States mail, postage prepaid, at Lynchburg, Virginia on the 3rd day of August, 1983.

_____
Sidney H. Kirstein

Received by the Supreme Court of Virginia on August 4, 1983.

83-303

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ALEXANDER L. STEVAS,
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1983

Case No. 83-303

ROBERT R. MANIATES,

Appellant,

v.

CITY OF LYNCHBURG and THOMAS S. MARSHALL,

Appellees,

MOTION TO DISMISS

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IN THE

SUPREME COURT FOR THE UNITED STATES

October Term, 1983

Case No. 83-303

ROBERT R. MANIATES,

Appellant,

v.

CITY OF LYNCHBURG and THOMAS S. MARSHALL,

Appellees.

MOTION TO DISMISS

The Appellees, the City of Lynchburg and Thomas S. Marshall, by Counsel, pursuant to Rule 16 (b) of this Court, respectfully move the Court to dismiss this appeal on the following grounds:

(1) That it does not present a substantial federal question, and

(2) That the judgment entered below rests

on an adequate non-federal basis.

The facts and legal authorities in support of this Motion are set forth herein, following the designations contained in the Appellant's jurisdictional statement.

JURISDICTION

28 U.S.C. Section 1257(2) does not confer jurisdiction in this case. Although several Virginia statutes are involved in the proceedings, and although the Appellant has made constitutional arguments concerning them, the case presents no substantial federal question and should be dismissed. The doctrines enunciated in Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) and its progeny; Mathews v. Eldridge, 424 U.S. 319 (1976); and, Commissioner v. Shapiro, 424 U.S. 614 (1976) are inapplicable to a proceeding for the collection of delinquent taxes by a governing authority. The decision below, furthermore, rests upon an adequate non-federal basis; namely, the trial court's

factual finding that the Appellant was afforded an adequate remedy at law.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Appellant asserts that this case involves the constitutionality, under the Fifth Amendment to the United States Constitution, of Section 58-1010 of the Code of Virginia, 1950, as amended. Section 58-1010 provides in pertinent part:

> Any person indebted to or having in his hands estate of a person assessed with taxes or levies may be applied to in writing by the officer for payment thereof out of such debt or estate and a payment by such person of such taxes or levies, either in whole or in part, shall entitle him to a charge or credit for so much on account of such debt or estate against the party so assessed. From the time of service by such officer of any such application, the taxes and levies shall constitute a lien on the debt so due from such person or on the estate in his hands.... (Appendix page 7).

Section 58-1010 constitutes the underlying authority of a governing authority to acquire a lien on an assessed taxpayer's assets in the hands of third parties. Section 58-792.01

of the Code of Virginia, 1950, as amended (Appendix page 1), requires a local governing body to give a property owner notice of all assessments or reassessments of real estate. Sections 58-1141 through 58-1144 of the Code of Virginia, 1950, as amended (Appendix pages 1, 2, 3), provide that any person assessed with a tax or levy has the right to request a hearing before the official making such assessment, and such official may modify the assessment if it is found to be erroneous. Section 58-895 and Sections 58-904 through 58-907 of the Code of Virginia, 1950, as amended (Appendix pages 3, 4), require the establishment of local boards of equalization, which boards are quasi judicial bodies that hear complaints regarding tax assessments and have the power to modify such assessments. Moreover, Sections 58-1145 through 58-1151 of the Code of Virginia, 1950, as amended (Appendix pages 4, 5, 6), allow a taxpayer to maintain an action in

the local circuit courts for the relief of a tax assessment prior to the institution of a 58-1010 collection proceeding, and also allow a taxpayer to maintain an action to recover taxes erroneously paid or improperly collected.

STATEMENT OF THE CASE

This case involves the garnishment of the Appellant's bank account by Thomas S. Marshall, in his capacity as Assistant City Collector for the City of Lynchburg, pursuant to Section 58-1010 of the Virginia Code in order to collect the Appellant's delinquent real estate taxes for the 1978-79 tax year.

The Appellant refused to pay his duly assessed real estate taxes when such taxes were due and payable because of his differences with certain City policies. The notice of Maniates' tax assessment, a real estate tax bill, a first delinquency notice and a final delinquency notice were all mailed to the Appellant's last known address by first class mail. At no time during the

proceedings in this case did the Appellant allege that the amount of his tax assessment was erroneous or was not due and payable or that he had not been given notice of his assessment.

The Appellant did not request a hearing before the City Assessor or the Local Board of Equalization to contest the accuracy of his assessment nor did he initiate an action in the Lynchburg Circuit Court to contest his tax assessment, which remedies were available to the Appellant under provisions of the Virginia Code.

In March of 1980, pursuant to Section 58-1010 of the Virginia Code, the City notified Maniates' bank that it was claiming a lien against his bank account for the payment of his delinquent real estate taxes. Subsequent to the placement of the lien, the Appellant's bank turned the amount of the delinquent taxes over to the City. At no time subsequent to the placement of the

lien on his bank account did the Appellant initiate an action in the Lynchburg Circuit Court seeking a judicial hearing concerning the assessment and/or collection of his taxes. The Appellant did initiate an action in the Lynchburg Circuit Court asking the Court to declare the statutory collection scheme embodied by Section 58-1010 unconstitutional.

The Circuit Court heard evidence in this case and entered an order finding that the collection procedures authorized by Section 58-1010 did not deny the Appellant due process of law. The Appellant appealed the case to the Virginia Supreme Court which declined to review the Appeal.

QUESTIONS PRESENTED

1. Whether the provisions of the Code of Virginia, which afford a taxpayer with numerous opportunities for pre-seizure and post-seizure hearings regarding the amount of a tax assessment and the collection

thereof, provide due process of law in the collection of delinquent real estate taxes.

2. Whether the lower court's decision rests on an adequate non-federal basis when it dismissed the Appellant's petition on the factual grounds of an adequate remedy at law.

ARGUMENT

I.

NO SUBSTANTIAL FEDERAL QUESTION IS PRESENTED BECAUSE DUE PROCESS DOES NOT REQUIRE NOTICE OR A HEARING BEFORE THE FILING OF A LIEN TO COLLECT AN ASSESSED TAX.

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974); and North Georgia Finishing Inc., v. Di-Chem, Inc., 419 U.S. 601 (1975), apply to the prejudgment remedies of private collectors in ordinary commercial transactions, not to the collection of delinquent

taxes by a taxing authority. Fuentes, supra, at 91-92 expressly acknowledged that the collection of revenues by a taxing authority is an extraordinary situation that justifies the use of collection proceedings that are not permitted in ordinary commercial transactions.

It is a recognized requirement of due process that, at some stage before a tax becomes irrevocably fixed as a charge on a taxpayer's property, he must be given notice and an opportunity to be heard regarding the tax. See, Security Trust & S. V. Co. v. Lexington, 203 U.S. 323 (1906). As applied to proceedings for the collection of taxes, however, the requirements of due process have historically been considered more summary in character and necessarily less formal than the due process requirements applicable to cases of judicial character. King v. Mullins, 171 U.S. 404 (1898). Due process does not require judicial review

before efforts to collect a tax are begun, and even taking in excess of the actual amount of indebtedness does not deny due process provided proper opportunity is afforded for correction. Liverpool & L. & G. Ins. Co. v. Board of Assessors, 221 U.S. 346 (1911). It is sufficient if a taxpayer has a single opportunity to be heard before an impartial tribunal with respect to the validity and amount of the tax before liability is conclusively established against him. See, Nickey v. Mississippi, 292 U.S. 393 (1934); McGregor v. Hogan, 263 U.S. 234 (1923); Turner v. Wade, 254 U.S. 64 (1920). A taxpayer is afforded due process if he has notice and an opportunity to be heard either before or after a tax lien is fixed on his property. Gallup v. Schmidt, 183 U.S. 300 (1902); Hodge v. Muscatine County, 196 U.S. 276 (1905).

In the area of tax collection, the opportunity for a hearing can occur after the

summary seizure of the taxpayer's property. The usual procedure for the recovery of debts is reversed in the field of taxation. A taxing authority has the right to exact immediate payment of assessed taxes and to regulate the taxpayer to a suit for recovery. If a taxpayer has an opportunity for a hearing after the summary seizure of his property, the requirements of due process have been met. Phillips v. Commissioner, 283 U.S. 589, 595 (1931) and Bull v. United States, 295 U.S. 247, 260 (1935).

The foregoing authorities establish that there is no due process requirement of notice or a hearing prior to a seizure of property for assessed taxes where there is a subsequent opportunity to be heard before the taxpayer is ultimately deprived of his property.

The Appellant misstates the operative principles of his case. First, he argues that his tax collection case is governed

by the more stringent due process standards which apply to creditor collection proceedings, although this Court has historically recognized that due process is more summary in character and less formal in tax proceedings. Secondly, he would have this Court believe that the relationship between taxpayer and sovereign is a mere debtor/creditor relationship, despite the fact that it consists of a mandatory statutory obligation to pay, rather than a contractual undertaking involving mutual consent and a meeting of the minds. Thirdly, he completely ignores those provisions of the Virginia Code that afford taxpayers the right to a hearing on the accuracy of their assessments and the collection thereof. Finally, the Appellant's contentions, if correct, would permit a taxpayer to defer payment of any assessed tax for substantial periods of time by litigating frivolous issues simply because the taxpayer disagrees with the taxing authority's

overall policies. Such an extension of due process as argued by the Appellant would seriously impair a taxing authority's collection of revenues and should be rejected.

II.

VIRGINIA'S STATUTORY PROVISIONS FOR A NOTICE AND A HEARING TO SATISFY THE REQUIREMENTS OF DUE PROCESS.

Due process in the collection of delinquent taxes requires that a delinquent taxpayer be afforded a meaningful opportunity for notice and a hearing either before or after a tax lien is fixed on his property. The provisions of the Virginia Code afford a taxpayer opportunities for a hearing both before and after the placing of a tax lien on his property and therefore meet due process requirements.

Section 58-792.01 of the Code of Virginia, 1950, as amended (Appendix page 1), requires a local governing body to give a property owner notice of any assessment or reassessment of real estate. While the Appellant's

case is limited to the collection of delinquent real estate taxes, the provisions of the Virginia Code that allow governing authorities to impose taxes and levies, other than real estate, require that any person so assessed be given notice of such assessments. Sections 58-1141 through 58-1144 of the Code of Virginia, 1950, as amended (Appendix pages 1, 2, 3), allow any person assessed with a tax or levy to request a hearing before the official making such assessment, and such official can modify the assessment if it is found to be erroneous.

Sections 58-895 and 58-904 through 58-915 of the Code of Virginia, 1950, as amended (Appendix pages 3, 4), require the establishment of local boards of equalization, which boards are quasi judicial bodies that hear complaints regarding tax assessments, have the power to modify such assessments, and whose decisions are subject to review by the local circuit courts.

Besides having the right to a hearing before a local board of equalization, Sections 58-1145 through 58-1151 of the Code of Virginia, 1950, as amended (Appendix pages 4, 5, 6), allow a taxpayer to maintain an action in the local circuit court for relief of a tax assessment prior to the institution of a 58-1010 collection proceeding. Also, once collection proceedings have been initiated pursuant to Section 58-1010 and a lien has been placed on a delinquent taxpayer's property, the provisions of Sections 58-1145 through 58-1151 allow a taxpayer to immediately file for a hearing in the local circuit court in which he can seek a review of his assessment, the release of the lien or a refund of any taxes erroneously or improperly collected. The relief available under Sections 58-1145 through 58-1151 applies to all tax assessments and levies, and the Supreme Court of Virginia has left no doubt that the relief affordable is not limited

to correction of erroneous assessments but also gives a taxpayer a right to maintain an action for taxes erroneously paid or collected. "The object of these statutes was to furnish an expeditious and inexpensive remedy against taxes which have been assessed or collected. They are to be liberally construed in order to furnish the remedy so provided." Ches., Etc., Tel. Co. v. Newport News, 194 Va. 409, 413, 73 S.E.2d 394 (1952).

It is not necessary as the Appellant argues that Section 58-1010 specifically spell out the requirements of notice and a hearing. One must keep in mind that Section 58-1010 is not to be viewed in a vacuum but as part of an integrated statutory program for the assessment, review and collection of taxes. Numerous other provisions of the Virginia Code spell out and afford a taxpayer notice and opportunity for administrative and judicial hearings both before and after collection proceedings have been initiated pursuant

to Section 58-1010. It is not necessary that Section 58-1010 specifically address the requirements of notice in a hearing since these matters are sufficiently covered in other provisions of Title 58 of the Virginia Code.

Indeed, the issues raised in the Appellant's case are almost identical to those raised in the case of Stuart McGuire Company, Inc. v. William H. Forst, 429 U.S. 805 cert. denied (1976), in which the Supreme Court of Virginia upheld the actions of a state official who used the provisions of Section 58-1010 to seize a corporate taxpayer's bank account for failure to pay Virginia's Sales and Use Tax. The trial judge held that Virginia's statutory collection procedures did not deny a taxpayer due process of law and afforded opportunities for notice and a hearing. This Court subsequently refused to grant certiorari in the case for want of a substantial federal question.

The cases of Commissioner v. Shapiro, 424 U.S. 614 (1976) and Mathews v. Eldridge, 424 U.S. 319 (1976) are not supportive of the Appellant's arguments, because the factors that give rise to the decisions in these cases are lacking in the case at bar. Mathews dealt with governmental procedures for the termination of Social Security benefits. In reaching its decision in Mathews, this Court expressly recognized that due process, unlike some legal rules, is not a technical conception with a fixed concept unrelating to time, place and circumstances. Rather, due process is flexible and calls for such procedural protections as the particular situation demands. Identifying specific dictates of due process in a particular situation requires the use of a balancing test that considers the governmental and private interests that are affected. Id. at 334-335.

In applying the balancing test in Mathews, this Court analyzed the private interests

that would be affected by the official actions and the governmental interests involved and determined that the governmental interests did not outweigh the private. However, from an early date, this Court has made it clear that a government has no more important or vital interest than the prompt collection of its revenues and has held that in this area private interests must yield to the needs and interests of government. Phillips v. Commissioner, supra, at 596, and Bull v. United States, supra, at 259.

Shapiro dealt with a situation in which the Government's interpretation of the Internal Revenue Code denied a taxpayer an opportunity for a meaningful post-seizure hearing regarding the summary seizure of his property. The Government's interpretation of the Internal Revenue Code's Anti-Injunction Act, 21 U.S.C. Section 74221 (a) and the Williams Packing exception to the Act would in effect have denied the taxpayer

an opportunity for a meaningful post-seizure hearing regarding the summary seizure of his property. The lack of a meaningful hearing was the basis of the Court's decision. In the case at bar, the Appellant had the opportunity to request an immediate judicial hearing concerning the seizure of his bank account had he chosen to do so. Accordingly, the circumstances that led to the Court's decision in Shapiro are lacking in the case at bar.

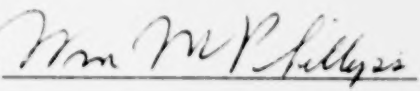
CONCLUSION

The provisions of the Virginia Code afforded the Appellant and taxpayers in general substantial due process in the collection of delinquent real estate taxes. Under the provisions of the Virginia Code, a taxpayer is given notice of his assessment and has an opportunity to request an administrative or judicial hearing to question the validity of his taxes or levies, before any collection proceedings are initiated pursuant to Section

58-1010. Moreover, once a lien has been placed on a delinquent taxpayer's property, pursuant to a Section 58-1010 collection proceeding, the taxpayer has the right to immediately file for a hearing before the local circuit court in which he can seek a review of his tax assessment, the release of the lien or refund of any taxes erroneously or improperly collected. The parties in this case have stipulated that the Appellant had the opportunity to initiate both administrative and judicial hearings but failed to do so. A taxpayer is afforded various opportunities for hearings, judicial and administrative, at every stage of the assessment and collection process. The fact that the Appellant chose not to avail himself of the opportunities available to him under State law can hardly be said to require that the use of a 58-1010 collection proceeding be characterized as constitutionally invalid. Such an extension of due process as is argued

by the Appellant would seriously impair the collection of revenues, and should be rejected. For the foregoing reasons, it is respectfully submitted that this case presents no substantial federal question and that the decision of the trial court rests on an adequate non-federal basis and that this Appeal should be dismissed.

CITY OF LYNCHBURG and
THOMAS S. MARSHALL

By: 

William M. Phillips
City Attorney
P. O. Box 60
Lynchburg, VA 24505

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he mailed a true copy of the foregoing Motion to Dismiss to Sidney H. Kirstein, Esq., at his last known address of McRorie, Kirstein & McMahon, P. O. Box 8, Lynchburg, VA 24505, by depositing the same in the regular manner in the United States mail,

postage prepaid, at Lynchburg, Virginia, on the 16 day of September, 1983.

William M. Phillips

APPENDIX

§ 58-792.01. Notice of change in assessment. —Whenever in any county, city or town there is a reassessment of real estate, or any change in the assessed value of any real estate, notice shall be given by mail directly to each property owner, as shown by the land books of the county, city or town whose assessment has been changed. Such notice shall be sent by postpaid mail at least fifteen days prior to the date of a hearing to protest such change to the address of the property owner as shown on such land books. The governing body of the county, city or town shall require the officer of such county, city or town charged with the assessment of real estate to send such notices or it shall provide funds or services to the persons making such reassessment so that such persons can send such notices.

Every notice shall, among other matters, show the magisterial or other district, if any, in which the real estate is located, the amount and the new appraised value of land, the new appraised value of improvements, the new assessed value of each if different from the appraised value, and the assessment ratio employed by the locality. It shall further set out the time and place at which persons may appear before the officers making such reassessment or change and present objections thereto; provided, however, that in counties which have elected by ordinance to prepare land and personal property books in alphabetical order as authorized by § 58-804 (c) such notice may omit reference to districts as provided herein.

Any person, firm or corporation, other than the owner who receives such reassessment notice, shall transmit the notice to such owner, at his last known address, immediately on receipt thereof, and shall be liable to such owner in an action at law for liquidated damages in the amount of twenty-five dollars, in the event of a failure to so transmit the notice. Mailing such notice to the last known address of the property owner shall be deemed to satisfy the requirements of this section.

Notwithstanding the above, if the address of the taxpayer as shown on the tax record is in care of a lender, the lender shall upon request furnish the county, city or town a list of such property owners, together with their current addresses as they appear on the books of the lender, or the parties may by agreement permit the lender to forward such notices to the property owner, with the cost of postage to be paid by the county, city or town. (1973, c. 210; 1974, c. 179; 1975, c. 614; 1977, c. 594.)

§ 58-1141. Application to commissioner of the revenue or other official for correction. — Any person, firm or corporation assessed by a commissioner of the revenue or other official performing the duties imposed on commissioners of the revenue under this title with local levies on tangible personal property, machinery and tools, or merchants' capital, or a local license tax, or local capitation tax, aggrieved by any such assessment, may, within three years from the last day of the tax year for which such assessment is made, apply to the commissioner of the revenue or such other official who made the assessment for a correction thereof.

Sections 58-1141 to 58-1144 shall also apply to erroneous assessments of real estate if the error sought to be corrected in any case was made by the commissioner of the revenue or such other official to whom the application is made. (1928, p. 227; 1932, p. 514; Tax Code, § 413; 1952, c. 82; 1954, c. 533; 1958, c. 585; 1971, Ex. Sess., c. 13; 1974, c. 362; 1977, c. 99.)

§ 58-1142. Correction by Commissioner or other official performing his duties. — If such Commissioner of the Revenue, or other official performing the duties imposed on Commissioners of the Revenue under this title, be satisfied that he has erroneously assessed such applicant with any such levy, as aforesaid, the Commissioner or such other official shall correct such assessment. If the assessment exceeds the proper amount, the Commissioner or such other official shall exonerate the applicant from the payment of so much as is erroneously charged if not paid into the treasury of the county or city; and if paid, the governing body of the county or city shall, upon the certificate of the Commissioner or such other official with consent of the town, city or Commonwealth's attorney that such assessment was erroneous, direct the treasurer of the county or city to refund the excess to the taxpayer, with interest, if authorized pursuant to § 58-1152.2, provided such application was made within three years from the last day of the tax year for which such assessment was made.

If the assessment be less than the proper amount, the Commissioner or such other official shall assess such applicant with the proper amount. If any assessment be erroneous, because of a mere clerical error or calculation, the same may be corrected as herein provided and with or without petition from the taxpayer involved. If such error or calculation was made in work performed by others in connection with conducting general assessments, such mistake may be corrected by the Commissioner of the Revenue. An error in the valuation of property subject to the rollback tax imposed under § 58-769.10 for those years to which such tax is applicable may be corrected within three years of the assessment of the rollback tax.

A copy of any correction made under this section shall be certified by the Commissioner or such other official to the treasurer of his county or the treasurer or city collector of his city. When an unpaid erroneous assessment of real

treasurer of the county or city to refund the excess to the taxpayer, provided such time be within three years from the thirty-first day of December of the year in which such assessment was made. If the assessment be less than the proper amount, the commissioner or such other official shall assess such applicant with the proper amount provided, further, that if any assessment be erroneous, because of a mere clerical error or calculation, the same may be corrected as herein provided and with or without any petition from the taxpayer involved, and without any limitation as to time. A copy of any correction made under this section shall be certified by the commissioner or such other official to the treasurer of his county or the treasurer or city collector of his city; provided, however, that when an unpaid erroneous assessment of real estate is corrected under this section and such real estate has been sold at a delinquent land sale, the commissioner or such other official making such correction shall certify a copy of such correction to the clerk of the circuit court of his county or to the clerk of the court in whose office deeds are admitted to record in his city, as the case may be; and such clerk shall note such correction in the Delinquent Land Book opposite the entry of the tract or lot for the year or years for which such correction is made. No refund of a State capitation tax shall be made under this section. (1928, p. 227; 1932, p. 514; Tax Code, § 413; 1956, c. 598; 1958, c. 585; 1960, c. 547.)

§ 58-1143. Appeal by locality. — Any county, city, town or other political subdivision of this State, aggrieved by any such correction made by a commissioner of the revenue under the preceding section (§ 58-1142), may, through its attorney for the Commonwealth or city attorney in any city having such an attorney, within six months from the date such correction is certified by the commissioner of the revenue to such treasurer or city collector, apply to any court of record of the county or city for a review of the action of such commissioner. At least five days before the hearing on such application notice thereof shall be given the commissioner of the revenue. The court on such hearing shall enter such order as to it may seem proper on the law and the facts. (1928, p. 227; 1932, p. 514; Tax Code, § 413.)

§ 58-1144. Remedy not to affect right to apply to court. — The remedy granted by the three preceding sections (§§ 58-1141 to 58-1143) shall be in addition to the right of any taxpayer to apply within the time prescribed by law to the proper court as provided by law for the correction of erroneous assessments of the classes described in such sections and application may be made to the proper court irrespective of whether such applicant has or has not theretofore made application to the commissioner of the revenue for the correction of any such assessment. (1928, p. 228; 1932, p. 514; Tax Code, § 413.)

§ 58-895. (Effective until January 1, 1984) Appointment. — A. The circuit court having jurisdiction within each city shall, in each tax year following the year a general reassessment or annual or biennial assessment is conducted in such city, appoint for such city a board of equalization of real estate assessments unless such assessment or reassessment is made by a board of assessors composed of freeholders.

B. The council of any city not required to have a board of equalization under subsection A may establish such board in any year by majority vote. Such board shall be appointed by the circuit court having jurisdiction within such city.

C. The term of any board of equalization appointed under the authority of this section shall expire six months after the effective date of the assessment for which they were appointed. (1926, p. 250; 1928, p. 199; 1930, p. 874; 1932, p. 154; 1934, p. 509; 1936-7, p. 73; 1940, p. 663; 1942, p. 425; 1944, p. 631; Tax Code, § 344; 1975, c. 575; 1979, c. 577.)

§ 58-904. Hearing complaints and equalizing assessments. — The board shall hear and give consideration to such complaints and equalize such assessments and shall, moreover, be charged with the especial duty of increasing as well as decreasing assessments, whether specific complaint be laid or not, if in its judgment, the same be necessary to equalize and accomplish the end that the burden of taxation shall rest equally upon all citizens of such county or city. The commissioner of the revenue of such county or city shall, when requested, attend the meetings of the board, without additional compensation, and shall call the attention of the board to such inequalities in real estate assessments in his county or city as may be known to him. Every board of equalization may go upon and inspect any real estate subject to equalization by it. (1926, p. 252; 1928, p. 200; 1930, p. 875; Tax Code, § 345.)

§ 58-905. Taxpayer or local authorities may apply for equalization. — Any taxpayer may apply to the board of equalization for the equalization of his assessment, including errors in acreage; and any county or city through its appointed representative or attorney may apply to the board of equalization to equalize the assessment of any taxpayer. (1926, p. 252; 1928, p. 200; 1930, p. 875; Tax Code, § 346.)

§ 58-906. Action of board; notice required before increase made. — The board shall hear and determine any and all such petitions and, by order, may increase, decrease or affirm the assessment of which complaint is made; and, by order, it may increase or decrease any assessment, upon its own motion; provided, however, that no assessment shall be increased until after the owner of the property has been notified and given an opportunity to show cause against such increase, unless such owner has already been heard. (1926, p. 252; 1928, p. 201; 1930, p. 875; Tax Code, § 346.)

§ 58-907. Appeal. — The attorney for the county, city or town or any taxpayer, aggrieved by any such order, may apply to the circuit court of the county or any city court of record of the city, for the correction and revision of such order, in the same manner and within the same time as is provided by law for the correction of erroneous assessments of real estate by any person who is aggrieved thereby. (1926, p. 252; 1928, p. 201; 1930, p. 876; Tax Code, § 346.)

§ 58-1145. Application to court to correct erroneous assessments of local levies generally. — Any person assessed with county or city levies or other local taxes, aggrieved by any such assessment, may, unless otherwise specially provided by law, within three years from the last day of the tax year for which any such assessment is made, apply for relief to the circuit court of the county or any city court of record of the city wherein such assessment was made. In such proceeding the burden of proof shall be upon the taxpayer to show that the property in question is assessed at more than its fair market value or that the assessment is not uniform in its application, or that the assessment is otherwise invalid or illegal, but it shall not be necessary for the taxpayer to show that intentional, systematic and wilful discrimination has been made. Part 4 of the Rules of the Supreme Court of Virginia (Pretrial Procedures, Depositions and Production at Trial) shall apply to proceedings brought under this section for correction of a property tax assessment, in any case in which the difference between the assessed value and the fair market value as claimed by the taxpayer exceeds one hundred thousand dollars.

In the event it comes or is brought to the attention of the commissioner of revenue of the locality that the assessment of any tax is improper or is based on obvious error and should be corrected in order that the ends of justice may be served, the commissioner shall apply to the appropriate court, in the manner herein provided for relief of the taxpayer. Such application may include a petition for relief for any of several taxpayers. (Code 1919, §§ 2249, 2389, 2390; 1920, p. 341; 1924, p. 589; 1926, p. 644; 1928, p. 228; 1936, p. 253; 1942, p. 610; Tax Code, § 414; 1968, c. 360; 1974, c. 362; 1977, c. 99; 1980, c. 735.)

§ 58-1146. Computation of period of limitation. — The application aforesaid may in all cases be filed in the clerk's office of any such court in vacation and the time which shall elapse from the filing of such application in the clerk's office, as aforesaid, to the hearing on the same by the court shall be excluded from the computation of the period of limitations. (Code 1919, §§ 2249, 2389, 2390; 1920, p. 341; 1924, p. 589; 1926, p. 644; 1928, p. 228; 1936, p. 253; 1942, p. 610; Tax Code, § 414; 1977, c. 99.)

§ 58-1147. Correction of double assessments; time for filing. — When it is shown to the satisfaction of the court that there has been a double assessment in any case, one of which assessments is proper and the other erroneous, and that a proper single tax has been paid thereon, the court may order such erroneous assessment to be corrected and grant redress therefor, whether such erroneously assessed tax has been paid or not, even though the application for such relief or redress be not made to the court within the time hereinbefore required. (Code 1919, §§ 2249, 2389, 2390; 1920, p. 341; 1924, p. 589; 1926, p. 644; 1928, p. 228; 1936, p. 253; 1942, p. 610; Tax Code, § 414; 1981, c. 178; 1982, c. 359.)

§ 58-1148. Action of court. — If the court be satisfied from the evidence that the assessment is erroneous and that the erroneous assessment was not caused by the wilful failure or refusal of the applicant to furnish a list of his property to the tax-assessing authority, as the law requires, or that the applicant is erroneously charged with a local license tax and that the erroneous assessment was not caused by the wilful failure or refusal of the applicant to furnish the tax-assessing authority with the necessary information, as required by law, the court may order that the assessment be corrected. If, in the opinion of the court, the assessment exceeds the proper amount, the court may reduce the assessment to what in its opinion based on the evidence is the fair market value of the property involved and shall order that the applicant be exonerated from the payment of so much as is erroneously charged, if not already paid and, if paid, that it be refunded to him with interest if authorized pursuant to § 58-1152.2. If, in the opinion of the court, the assessment be less than the proper amount, the court shall order the assessment increased to what in its opinion is the fair market value of the property involved and shall order that the applicant pay the proper taxes.

For the purpose of reducing or increasing the assessment and adjusting the taxes in either case the court shall be clothed with all the powers and duties of the authority which made the assessment complained of, as of the time when such assessment was made, and all powers and duties conferred by law upon such authority between the time such assessment was made and the time such application is heard. (Code 1919, §§ 2249, 2389, 2390; 1920, p. 341; 1924, p. 589; 1926, p. 644; 1928, p. 229; 1936, p. 253; 1942, p. 610; Tax Code, § 414; 1975, c. 257.)

§ 58-1149. Defense; contents of order of exoneration. — The Commonwealth's attorney for such county, or the Commonwealth's attorney or city attorney for the city, as the case may be, shall defend the application; and no order made in favor of the applicant shall have any validity unless it is stated therein that such attorney did so defend or, after notice of such application, failed or refused to defend (in which event the court shall appoint a practicing attorney of the county or city to defend such motion), and that the commissioner of the revenue making the assessment or his successor, if it was made by a commissioner, was examined as a witness touching the application, and the facts proved be certified. (Code 1919, §§ 2249, 2389, 2390; 1920, p. 341; 1924, p. 589; 1926, p. 644; 1928, p. 228; 1936, p. 253; 1942, p. 610; Tax Code, § 414.)

§ 58-1150. Effect of order. — An order of exoneration under the preceding section (§ 58-1149), when delivered to the tax-collecting officer, shall restrain him from collecting so much as is thus erroneously charged. If what was so erroneously charged has been paid, the order of the court shall compel the treasurer, or city collector, as the case may be, to refund to the applicant the amount specified in the order. (Code 1919, §§ 2249, 2389, 2390; 1920, p. 341; 1924, p. 589; 1926, p. 644; 1928, p. 229; 1936, p. 254; 1942, p. 611; Tax Code, § 414.)

§ 58-1151. Remedy applicable upon general reassessments; all changes to be certified to commissioners. — The six preceding sections (§§ 58-1145, 58-1146 to 58-1150), insofar as they apply to real estate, shall be construed to include assessments made at a general reassessment and the remedy therein provided shall be available to any person assessed at such general reassessment although no taxes may have been extended on the basis of such assessment at the time the application is filed. Whenever a correction of a real estate assessment is ordered by a court, whether such assessment was made at a general reassessment or not, the clerk of the court shall certify to the proper commissioner of the revenue the changes made by the court so that he may note such changes on the land assessment books. (Code 1919, §§ 2249, 2389, 2390; 1920, p. 341; 1924, p. 589; 1926, p. 644; 1928, p. 229; 1936, p. 254; 1942, p. 611; Tax Code, § 414.)

§ 58-1010. Collection out of estate in hands of or debts due by third party. — Any person indebted to or having in his hands estate of a person assessed with taxes or levies may be applied to in writing by the officer for payment thereof out of such debt or estate and a payment by such person of such taxes or levies, either in whole or in part, shall entitle him to a charge or credit for so much on account of such debt or estate against the party so assessed. From the time of the service by such officer of any such application, the taxes and levies shall constitute a lien on the debt so due from such person or on the estate in his hands. For each application served upon the person applied to, that person shall be entitled to a fee of twenty dollars which shall constitute a charge or credit against the debt to or estate of the party assessed. If the person applied to does not pay so much as may seem to the officer ought to be recovered on account of the debt or estate in his hands, the officer shall, if the sum due for such taxes or levies does not exceed $2,000, exclusive of penalties and interest, procure from a justice of the peace or judge or clerk of a court not of record a summons directing such person to appear before the appropriate county court or municipal court, at such time and place as may seem reasonable, and if the sum due exceeds $2,000, shall procure from the clerk of the circuit court of the county or corporation court of the city a summons directing such person to appear before such court on the first day of the next term thereof. In all cases returnable before a county court or municipal court, any person so summoned shall have a right, if the sum due for such taxes or levies exceeds the sum of $300, exclusive of penalties and interest, to remove the case to a court having jurisdiction of appeals from such county court or municipal court wherein the case was brought, and the procedure for and upon such removal shall be the same, mutatis mutandis, as is provided by § 16.1-92. (Code 1919, § 2414, 1925, p. 213; 1944, p. 333; Tax Code, § 382; 1960, c. 573; 1983, c. 481.)